

By: McClendon, Leach, Herrero, Moody,  
Simpson, et al.

H.B. No. 48

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a commission to review convictions  
after exoneration and to prevent wrongful convictions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 43, Code of Criminal Procedure, is  
amended by adding Article 43.27 to read as follows:

Art. 43.27. TIMOTHY COLE EXONERATION REVIEW COMMISSION

Sec. 1. CREATION. The Timothy Cole Exoneration Review  
Commission is created.

Sec. 2. COMPOSITION. The commission is composed of the  
following nine members:

(1) the presiding judge of the court of criminal  
appeals, or another judge of the court of criminal appeals  
appointed by the presiding judge;

(2) the chief justice of the Texas Supreme Court, or  
another justice of the Texas Supreme Court appointed by the chief  
justice;

(3) a district court judge, appointed by the presiding  
judge of the court of criminal appeals;

(4) the presiding officer of the Texas Commission on  
Law Enforcement, or a member or employee of the Texas Commission on  
Law Enforcement appointed by the presiding officer;

(5) the presiding officer of the Texas Indigent  
Defense Commission, or a member or employee of the Texas Indigent

1 Defense Commission appointed by the presiding officer;

2 (6) the presiding officer of the Texas Forensic  
3 Science Commission, or a member or employee of the Texas Forensic  
4 Science Commission who has significant experience in the field of  
5 forensic science appointed by the presiding officer;

6 (7) the chair of the Senate Committee on Criminal  
7 Justice, or the chair's designee;

8 (8) the chair of the House Committee on Criminal  
9 Jurisprudence, or the chair's designee; and

10 (9) the president of the State Bar of Texas, or the  
11 president's designee.

12 Sec. 3. ADVISORY PANEL. The commission may receive advice  
13 and guidance from an advisory panel composed of the following  
14 members:

15 (1) the president of the Texas Criminal Defense  
16 Lawyers Association, or the president's designee;

17 (2) the chairman of the board of the Texas District and  
18 County Attorneys Association, or the chairman's designee; and

19 (3) the director of the Texas Center for Actual  
20 Innocence at The University of Texas School of Law, the director of  
21 the Texas Innocence Network at the University of Houston Law  
22 Center, the executive director of the Innocence Project of Texas,  
23 or the executive director of the Innocence Project at Thurgood  
24 Marshall School of Law, each serving on a rotating basis.

25 Sec. 4. TERMS; VACANCIES. (a) If a member of the  
26 commission is appointed under Sections 2(1)-(6), the member serves  
27 for a six-year term.

1       (b) The presiding officer of the commission shall be elected  
2 on an annual basis by the members of the commission.

3       (c) If a person appointed to the commission does not  
4 complete the person's term, the vacancy is filled for the unexpired  
5 portion of the term in the same manner as the original appointment.

6       (d) The presiding officer may appoint committees from the  
7 membership of the commission as needed to organize the commission  
8 or to perform the duties of the commission.

9       (e) The commission may hire a director and other necessary  
10 personnel to perform the duties of the commission.

11       Sec. 5. ADMINISTRATIVE ATTACHMENT. (a) The commission  
12 exists under the Texas Judicial Council created under Chapter 71,  
13 Government Code. The commission operates independently of the  
14 Texas Judicial Council.

15       (b) The commission is administratively attached to the  
16 Office of Court Administration of the Texas Judicial System.

17       (c) Notwithstanding any other law, and subject to available  
18 funding, the Office of Court Administration of the Texas Judicial  
19 System shall:

20               (1) provide administrative assistance and services to  
21 the commission, including budget planning and purchasing;

22               (2) accept, deposit, and disburse money made available  
23 to the commission;

24               (3) pay the salaries and benefits of the director and  
25 employees of the commission; and

26               (4) provide the commission with adequate computer  
27 equipment and support.

1       Sec. 6. MEETINGS. (a) The commission may hold its  
2 meetings, hearings, and other proceedings at a time and in a manner  
3 determined by the commission, but shall meet in Austin at least  
4 annually.

5       (b) The commission shall conduct a public hearing at least  
6 annually, the agenda of which must include a review of the work  
7 conducted by the commission in the preceding year. The advisory  
8 committee may participate in a public hearing of the commission.

9       (c) Five members of the commission constitute a quorum. The  
10 commission may act only on the concurrence of five or more members.  
11 The commission may issue a report under Section 13 only on the  
12 concurrence of six members.

13       (d) A member of the commission is entitled only to  
14 reimbursement for the member's travel expenses as provided by  
15 Section 10 of this article, Chapter 660, Government Code, and the  
16 General Appropriations Act.

17       Sec. 7. QUALIFICATIONS. (a) A member of the commission  
18 may not participate in or vote on any matter before the commission  
19 if the matter directly concerns an individual related to the member  
20 within the second degree by affinity or consanguinity.

21       (b) An individual may not be a member of the commission or  
22 act as the general counsel to the commission if the individual or  
23 individual's spouse is required to register as a lobbyist under  
24 Chapter 305, Government Code, because of the individual's  
25 activities for compensation on behalf of a profession or entity  
26 related to the operation of the commission.

27       Sec. 8. GROUNDS FOR REMOVAL. (a) It is a ground for

1 removal from the commission that a member:

2 (1) if applicable, does not have at the time of  
3 appointment the qualifications required by this article;

4 (2) does not maintain during service on the commission  
5 the qualifications required by this article;

6 (3) violates a prohibition established by this  
7 article;

8 (4) is ineligible for membership under this article;

9 (5) cannot, because of illness or disability,  
10 discharge the member's duties for a substantial part of the member's  
11 term; or

12 (6) is absent from more than half of the regularly  
13 scheduled meetings that the member is eligible to attend during a  
14 calendar year, unless the absence is excused by a majority vote of  
15 the commission.

16 (b) The validity of an action of the commission is not  
17 affected by the fact that it is taken when a ground for removal of a  
18 commission member exists.

19 Sec. 9. COMMISSION MEMBER TRAINING. (a) A member of the  
20 commission shall complete a training program that meets the  
21 requirements of this section.

22 (b) The training program must provide the person with  
23 information regarding:

24 (1) the legislation that created the commission;

25 (2) the programs operated by the commission;

26 (3) the role and functions of the commission;

27 (4) the rules of the commission, with an emphasis on

1 the rules that relate to its examination authority;

2 (5) the requirements of laws relating to public  
3 officials and public meetings, including conflict-of-interest  
4 laws; and

5 (6) any applicable ethics policies adopted by the  
6 commission or the Texas Ethics Commission.

7 Sec. 10. COMPENSATION; REIMBURSEMENT. A member of the  
8 commission may not receive compensation for the services provided  
9 as a member. A member is entitled to reimbursement by the  
10 commission for the member's actual and necessary expenses incurred  
11 in performing commission duties, subject to the availability of  
12 funds that may be appropriated to the commission by the state.  
13 Reimbursements to members for actual and necessary expenses  
14 incurred may be authorized by the commission through funds received  
15 and administered by the commission from gifts, grants, and  
16 donations the commission accepts under Section 11.

17 Sec. 11. GIFTS, GRANTS, AND DONATIONS. (a) The commission  
18 may request and accept gifts, grants, and donations from any source  
19 to carry out its functions, except that the commission may not  
20 request or accept gifts from:

21 (1) a law firm, as defined by Section [72.028](#),  
22 Government Code;

23 (2) an attorney or the attorney's spouse; or

24 (3) an employee of the law firm or an attorney or the  
25 spouse of that employee.

26 (b) All gifts, grants, and donations must be accepted in an  
27 open meeting by a majority of the members of the commission then

1 present and voting, and must be reported in the public records of  
2 the commission with the name of the donor and purpose of the gift,  
3 grant, or donation accepted.

4 (c) The commission may authorize and disburse subgrants of  
5 funds from those funds that the commission may accept from time to  
6 time under this section for appropriate programs, services, and  
7 activities related to and in accord with the purposes and  
8 activities of the commission.

9 Sec. 12. DUTIES. (a) The commission shall thoroughly  
10 review and examine all cases in which an innocent defendant was  
11 convicted and exonerated, including convictions vacated based on a  
12 plea to time served, to:

13 (1) identify the causes of wrongful convictions and  
14 suggest ways to prevent future wrongful convictions and improve the  
15 reliability and fairness of the criminal justice system;

16 (2) ascertain errors and defects in the laws,  
17 evidence, and procedures applied or omitted in the defendant's  
18 case;

19 (3) identify errors and defects in the criminal  
20 justice system in this state generally, using research, expert  
21 analysis, and demographic data;

22 (4) consider suggestions to correct the identified  
23 errors and defects through legislation or procedural changes;

24 (5) identify procedures, programs, and educational or  
25 training opportunities designed to eliminate or minimize the  
26 identified causes of wrongful convictions, including the  
27 identified errors and defects in the criminal justice system that

1 contribute to wrongful convictions; and

2 (6) collect and evaluate data and information from an  
3 actual innocence exoneration reported to the commission by a  
4 state-funded innocence project, for inclusion in the commission's  
5 reports under Section 13.

6 (b) Subject to available funding and applicable  
7 accreditation procedures, the commission may assist with and  
8 suggest training and continuing education opportunities for  
9 persons involved in the investigation, prosecution, defense,  
10 trial, or appeal of matters in the criminal justice system.

11 (c) The commission shall review and examine each case in  
12 which a final ruling was made by the court of criminal appeals on a  
13 writ of habeas corpus granted for actual innocence on or after  
14 January 1, 1994, and each case in which a commutation of punishment  
15 or pardon was granted before January 1, 1994, based on a claim of  
16 actual innocence and shall use relevant data and information to:

17 (1) identify any apparent breach of professional  
18 responsibility or misconduct by attorneys, judges, or criminal  
19 justice system personnel that is revealed in the course of any  
20 habeas review process existing in the case;

21 (2) refer any apparent breach of professional  
22 responsibility or misconduct to, as appropriate, the State  
23 Commission on Judicial Conduct, the State Bar of Texas, the Texas  
24 Commission on Law Enforcement, the office of the attorney general,  
25 or other appropriate agency or office, for their review of the  
26 apparent breach of professional responsibility or misconduct;

27 (3) identify any patterns in:

1           (A) apparent breaches of professional  
2 responsibility or misconduct by attorneys, judges, or criminal  
3 justice system personnel; or

4           (B) errors or defects in the criminal justice  
5 system in this state that impact the pretrial, trial, appellate, or  
6 habeas review process; and

7           (4) consider and suggest legislative, training, or  
8 procedural changes to correct the patterns, errors, and defects  
9 identified through the work of the commission.

10          (d) The commission shall consider potential implementation  
11 plans, costs, cost savings, and the impact on the criminal justice  
12 system for each potential solution identified through the work of  
13 the commission.

14          (e) The commission may, subject to available funding, enter  
15 into contracts for research, analysis, and professional services as  
16 may be necessary or appropriate to facilitate the work and  
17 activities of the commission or to complete the review and  
18 examination of a case in which there has been a commutation of  
19 punishment, a pardon, or a final ruling of actual innocence on an  
20 application for a writ of habeas corpus.

21          (f) In its first biennium of operation the commission shall  
22 give particular attention to reviewing and updating the research,  
23 reports, and recommendations of the Timothy Cole advisory panel  
24 established in the 81st Regular Session and the degree to which the  
25 panel's recommendations were implemented.

26          (g) Following the initial biennium, in each subsequent  
27 biennium the commission shall:

1           (1) continue to monitor the progress and  
2 implementation of the recommendations made in the first biennium;  
3 and

4           (2) determine future items for study by identifying  
5 not more than 10 prominent criminal justice issues to consider, of  
6 which the chief justice of the Texas Supreme Court and the presiding  
7 judge of the court of criminal appeals biennially shall choose not  
8 more than six to be studied by the commission in the applicable  
9 biennium.

10          (h) The commission may solicit input from innocence  
11 projects, bar associations, judicial entities, law enforcement  
12 agencies, prosecutor associations, public defender or criminal  
13 defense associations, and advocacy organizations.

14          Sec. 13. REPORTS AND RECORDS. (a) The commission shall  
15 compile and issue a detailed annual report of its findings and  
16 recommendations, including any proposed legislation or policy  
17 changes necessary or appropriate to implement procedures and  
18 programs to prevent the causes and occurrence of future wrongful  
19 convictions, wrongful executions, or errors or defects in the  
20 habeas review process. The commission may also compile and issue  
21 interim reports for the same or similar purposes.

22          (b) Official annual and interim reports issued by the  
23 commission must be made available to the public on request.

24          (c) Working papers and records, including all documentary  
25 or other information, collected, received, prepared, or maintained  
26 by the commission or members or staff of the commission in  
27 performing the commission's duties under this article or other law

1 to conduct an evaluation and prepare a report, are confidential and  
2 not subject to disclosure under Chapter 552, Government Code.

3 (d) The commission may request that an entity of state  
4 government or of a political subdivision provide information  
5 related to the commission's duties under Section 12. On the request  
6 of the commission, an entity shall provide information to the  
7 commission unless otherwise prohibited from disclosing that  
8 information. The commission may examine the public records,  
9 documents, and files of an entity of state government or a political  
10 subdivision in carrying out the commission's duties.

11 (e) Information held by an entity of state government or of  
12 a political subdivision that is confidential and that the  
13 commission receives in connection with the performance of the  
14 commission's functions under this article or other law remains  
15 confidential and is not subject to disclosure under Chapter 552,  
16 Government Code.

17 Sec. 14. ASSISTANCE OF STATE AGENCIES; ACCESS TO STATE  
18 AGENCIES. (a) Subject to available funding, the commission may  
19 request assistance from the Legislative Budget Board and any  
20 state-supported university in performing the commission's duties.

21 (b) The commission may also request the assistance of other  
22 state agencies and officers. When assistance is requested, a state  
23 agency or officer shall assist the commission in carrying out its  
24 functions under this article.

25 Sec. 15. SUBMISSION. The commission shall submit the  
26 reports described by Section 13 to the governor, the lieutenant  
27 governor, the speaker of the house of representatives, the

1 legislature, and the Texas Judicial Council not later than December  
2 1 of each even-numbered year, or not later than the 60th day after  
3 the date the report is issued, whichever occurs first.

4 SECTION 2. The heading to Section 79.039, Government Code,  
5 is amended to read as follows:

6 Sec. 79.039. EXONERATION REPORTS [~~REPORT~~].

7 SECTION 3. Section 79.039, Government Code, is amended by  
8 adding Subsection (c) to read as follows:

9 (c) At the same time the legal clinic or program submits a  
10 report under Subsection (a), the clinic or program shall submit a  
11 comprehensive report to the Timothy Cole Exoneration Review  
12 Commission that:

13 (1) contains all information included in the report  
14 submitted under Subsection (a); and

15 (2) provides a narrative describing the services and  
16 work performed by the clinic or program during the previous fiscal  
17 year that includes the number of innocence claims the clinic or  
18 program handled in that year, including a summary of each claim, the  
19 legal remedies pursued, and the type of relief granted in the case,  
20 if any.

21 SECTION 4. This Act takes effect immediately if it receives  
22 a vote of two-thirds of all the members elected to each house, as  
23 provided by Section 39, Article III, Texas Constitution. If this  
24 Act does not receive the vote necessary for immediate effect, this  
25 Act takes effect September 1, 2015.